

**PROGRAM OPPORTUNITY NOTICE
FOR
SCHOOL DISTRICTS**

**LOWER-EMISSION SCHOOL BUS PROGRAM
Phase IV**



PON Number 600-04-602

Bus Replacement and Infrastructure

August 2004

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Note: The Lower-mission School Bus Program Guidelines, as approved by the CARB on _____ are available at www.arb.ca.gov/homepage.html

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Website: www.energy.ca.gov



INTRODUCTION

Funding for this Program Opportunity Notice (PON) is contingent upon approval of an Interagency Agreement between the Energy Commission and the California Air Resources Board (CARB).

Eligibility

The school districts located in the following air districts are not eligible to apply under the Energy Commission's program. These air districts will be administering their own school bus program in collaboration with the Energy Commission and the CARB. **If your school district is located in one of the air districts below, you must submit your application to your local air district, not to the Energy Commission.**

South Coast Air Quality Management District (SCAQMD)
Bay Area Air Quality Management District (BAAQMD)
Sacramento Metro Air Quality Management District (SMAQMD)
San Diego County Air Pollution Control District (SDCAPCD)

What is Environmental Justice?

The CARB has stated the terms "low-income" or "communities of color" are not defined in the budget language or in the proposed legislation, and is currently working with local community groups, air districts and others to properly define these terms (the issue is often referred to as Environmental Justice (EJ). Until that work is completed, the CARB and the Energy Commission will use the percentage of students enrolled in the free lunch or reduced lunch program as meeting the intent of the language. Specifically, a minimum of 50 percent of the funding for new buses shall be allocated to school districts with high of student enrollment in the lunch program (based on all school districts within the air district). The CARB provided the Energy Commission with a list of the free lunch program enrollment for each school district in California.

Each qualified application will be sorted by air district and by EJ eligibility. After sorting by air district and by EJ, qualifying applications will be separated into two additional categories: 1) alternative fuels and 2) low-emission diesel. School districts shall identify the quantity and fuel type of the buses they are applying for through this program. School districts may be eligible for awards in both categories. School districts that were successful during Phase 1, 2 and 3 may apply again for funding under Phase 4. However, the Energy Commission will not use the applications submitted under any of the previous Phases; school districts must submit a new application for Phase 4.

Key Activities and Dates

ACTIVITY	DATE
Release PON	August 31, 2004
School districts' application deadline for new buses	September 30, 2004
Notice of Proposed Awards	October 8, 2004
Commission Business Meeting	November 17, 2004
Contract Start Date	December 31, 2004
Buses ordered from distributors	November 30, 2004
All new buses delivered	December 31, 2005
Final reports due to CARB from air districts/Energy Commission	March 1, 2006
Contract Termination	January 2, 2006

*Should there be sufficient funds remaining after the first award of buses, a second drawing will be held. **Applications for the second drawing will be due October 31, 2004 by 4:00 p.m.** A second drawing will only be held if there is money remaining after the first drawing is held.

What Should Your Application Include?

All the forms in the Application Package (listed below) **must** be completed and included in the application you submit to the Energy Commission.

1. Bus replacement application
2. Letter indicating source of cost share funds
3. Form listing old buses to be replaced
4. Form listing new buses
5. Infrastructure form (must be completed and included with package whether or not funding is requested)
6. An original signed school board resolution (must be received no later than 9/15/03)
7. Copies of the on-board CHP certificate of each bus to be replaced
8. Copy of insurance/self insurance and coverage card or letter
9. Signed copy of the Contractor Certification Clauses

Please note, if any of the above forms are not completed or presented with the application, the application may be rejected.

How Many Copies Do I Submit?

Mail or deliver an **original application and two (2) copies** to the Energy Commission, 1516 Ninth Street, MS-18, Sacramento, CA 95814. School districts must submit the copies in a sealed envelope labeled: Phase 4, Lower Emission School Bus Program.

Where Do You Apply?

All applications must be delivered to the Energy Commission's Contracts Office by 5:00 p.m. on September 30, 2004. All deliveries must be made during normal business hours of 8:00 a.m. – 5:00 p.m., Monday through Friday. E-mail and facsimile (FAX) transmissions **WILL NOT** be

accepted in whole or in part under any circumstances. A school district may deliver their application by:

- U.S. mail;
- In person; or
- Messenger service.

No applications will be accepted after 5:00 p.m. on September 30, 2004.

Who do I Contact for Clarification about this PON?

Elizabeth Stone, Contract Officer
California Energy Commission
1516 Ninth Street, MS-18
Sacramento, California 95814
Telephone: (916) 654-5125

This PON is available and can be downloaded through the Commission's website at: www.energy.ca.gov/funding/contracts. Additional copies may be obtained by calling the Contracts Office at (916) 654-4392. Be sure to request the Program Opportunity Notice (PON) for the Lower Emission School Bus Program, Phase 4.

Who do I Contact for Technical Information?

School districts may contact Mike Trujillo (916) 654-4566 of the California Energy Commission for technical information.

Questions regarding the late penalty performance fee components of this program should be directed to the California Air Resources Board. Krista Fregoso can be reached at (916) 445-5035.

FUNDING ALLOCATIONS

A. School Bus Price List

Attachment 1 contains a pricing schedule for natural gas and low-sulfur diesel school buses. Kevlar seats and fire suppression are not included in these prices. If a school district wants Kevlar seats it would be an option the district would pay for. If a school district wants fire suppression on a natural gas bus the Energy Commission will pay for the added option. This schedule is not a bid but a guide to indicate the maximum amount the Energy Commission will pay for a comparable bus. These prices include the contribution which the qualifying school district will have to make based on CARB's Lower-Emission School Bus Guidelines. To determine your contribution requirements please refer to School Bus Guidelines at www.arb.ca.gov/msprog/schoolbus/final_draft_school_bus_guidelines.pdf. Again this is not a bid but only a guideline, any school bus that is price competitive with Attachment 1 and satisfies the CARB guidelines and these PON requirements is eligible for funding.

B. Infrastructure Funding

The School Districts may request funding to offset the cost of procuring new refueling or recharging equipment or expanding the capacity of existing refueling stations. School districts will have to estimate the cost of the necessary equipment and installation and include that as part of the application package. **Infrastructure funding will only be awarded for buses**

powered by an alternative fuel. Funding awards will not exceed, on average ten percent (10%) of the new bus funding awarded to the applying school district.

Invoices for infrastructure costs must be received no later than December 31, 2005, or the school will forfeit the ten percent (10%) reimbursement of infrastructure costs.

Note: The infrastructure form needs to be completed whether or not the school district is applying for infrastructure funds.

C. Cost Share Requirement

The CARB's guidelines contain minor modifications to the requirements for school districts' financial contributions for new buses funded through the Lower-Emission School Bus Program. The modifications presented below base the funding amount for each new bus purchase on the model year of the bus being replaced, and reduce the school districts' financial contribution for the replacement of each pre-1977 model year bus. Specifically, the modified CARB guidelines require that:

- The state will pay a minimum of 85 percent of the total cost of a new school bus (including taxes and applicable Department of General Service fees) that replaces an in-use pre-1977 model year school bus, with a priority on replacing diesel school buses. The school districts' financial contribution will be capped at \$10,000 per each new bus purchased. Other grant funds, such as air district funds (e.g., motor vehicle registration fee monies) can be used as a source of the required school district funds.
- The state will pay a minimum of 75 percent of the total cost of a new school bus (including taxes and applicable State Department of General Services fees) that replaces an in-use 1977 through 1986 model year school bus, with a priority on replacing diesel school buses. The school districts' financial contributions will be capped at \$25,000 per each new bus purchased. Again, other grant funds, such as air district funds (e.g., motor vehicle registration fee monies) can be used as a source of the required school district funds.

In revising the amount that some school districts will contribute to each new bus purchase, the CARB is acknowledging that the state's current budget situation may impact schools' abilities to participate in the Lower-Emission School Bus Program. Schools already lack sufficient funding from general funds for non-mandated services, such as school transportation; limited transportation funding may further dwindle as school districts' budgets are cutback and re-prioritized.

With the limited funding available through Proposition 40, the Lower-Emission School Bus Program now focuses funding in those school districts with the oldest buses (and thus most impacted by the cost of transportation services), yet retains the concept of program "buy-in" for school districts. The CARB believes that some form of program "buy-in" is necessary to maximize program benefits. It provides for the purchase of more new buses statewide, which means health and safety benefits for more people, and it ensures that school districts and/or air districts have a vested interest in adhering to program requirements.

While the modifications presented above retain the same percentages of state funding for each new bus purchased as in the existing Lower-Emission School Bus Program Guidelines, in practice, the state may be funding more than the minimum 75 percent or 85 percent of a new bus purchase. Under the existing Lower-Emission School Bus Program, the state also paid more than the minimum state funding percentages in some cases. For example, if the

total purchase price of a new compressed natural gas (CNG) bus is \$132,000, including applicable taxes and fees, and the school district contributes \$25,000, the state is actually paying over 80 percent (\$107,000) of the new bus total purchase price. If the school district qualifies for a reduced financial contribution based on the modifications contained in this guideline addendum, the state would pay for an even higher percentage of the new bus total purchase cost. In any case, the Energy Commission will only pay the maximum amount listed on Attachment 1.

To maximize state funds, Carl Moyer Program funds cannot be used as a source of the required school district funds.

The source of cost sharing for bus purchases and infrastructure shall be documented and attached to this application.

D. Payment

The Energy Commission's cost share for the school bus funding will be paid directly to the school district and would include sales taxes and DGS contract fees (if applicable). Energy Commission funds will be paid at the time of vehicle delivery and acceptance by the school district.

E. Disbursement of Funds

School districts must provide proof of vehicle delivery, and a bus destruction certificate at the time request for payment is made. In order to expedite payment, all reimbursement requests must be received no later than ten (10) days after the date the school district receives the bus. The bus vendor may charge the school district late penalties and interest if the school district does not pay the vendor in a timely fashion.

Infrastructure funds will be paid at the time of completion of the alternative-fuel refueling facility. Proof of completion and operation shall accompany any request for reimbursement of approved infrastructure funds. All requests for reimbursement must be received no later than December 31, 2005.

CONTRACT PROVISIONS

A. School Bus Replacement Criteria Overview

Only California public school districts that own and operate school buses, including school districts under provisions of a joint power authority, may participate in the Lower-Emission School Bus Program. Specific information on the school bus requested shall be provided in the application.

A duly signed school board resolution authorizing participation in the program, the school district's cost share of the buses, authority to enter into a contract with the Energy Commission and proof of insurance shall be submitted with the application (see attached example).

B. Bus Replacement Requirements

Only replacement buses will be funded. Fleet expansion buses are not eligible for funding.

All new buses must have a manufacturer Gross Vehicle Weight Rating (GVWR) greater than 14,000 pounds and must be powered by a heavy-duty engine (CARB classification). A signed school board resolution may be submitted under separate cover, but no later than December 30, 2004.

A new engine emission standard for NO_x is in effect for 2004 and later model year heavy-duty engines. The new standard, a combined NO_x plus non-methane hydrocarbon (NMHC) standard, is 2.4 grams per brake horsepower-hour (g/bhp-hr), or 2.5 g/bhp-hr with a 0.5 g/bhp-hr cap on NMHC. This standard applies across the board to all heavy-duty engines, whether diesel or alternative fuel, and to all engine manufacturers. Program funds used to purchase school buses with alternative-fuel engines will provide NO_x reductions: alternative-fuel engines are currently certifying to optional, reduced-emission NO_x plus NMHC standards of 1.5 to 1.8 g/bhp-hr.

Four engine manufacturers (Caterpillar, Cummins, John Deere, and International) are currently participating in the Lower-Emission School Bus Program and either have already certified engines that qualify for program funding or will soon complete certification of qualified engines. The following table summarizes the Lower-Emission School Bus Program's emission standard criteria and shows the emission standards to which the participating engine manufacturers are certifying their 2004 model engines.

Lower-Emission School Bus Program Emissions Eligibility Criteria and Manufacturers' Certification Levels		
Program Emission Standard Criteria	NO_x + NMHC Level ≤ 2.5 g/bhp-hr standard (with 0.5 g/bhp-hr cap on NMHC)	PM Level < 0.10 g/bhp-hr standard with exhaust after treatment*
Caterpillar – ULSD (Executive Order A-013-0170)	2.5 g/bhp-hr	0.01
Cummins – Alternative fuel (Executive Order A-021-0362)	1.8 g/bhp-hr	0.01
Cummins – Alternative fuel (Executive Order A-021-0355)	1.8 g/bhp-hr	0.004
John Deere – Alternative fuel (Executive Order A-108-0034)	1.5 g/bhp-hr	0.01
International – ULSD (certification in process)	2.5 g/bhp-hr	0.01

* Reduced-emission PM levels for ULSD engines must be at or below 0.01 g/bhp-hr; Reduced-emission PM levels for alternative-fuel engines must be at or below 0.03 g/bhp-hr

Diesel buses funded under this program must operate on low-sulfur diesel fuel (maximum sulfur content of 15 ppm by weight). Availability of required fuels by the time of delivery of the buses shall be documented. **The school districts must include in the application a**

description of the provisions that will be made to avoid possible mis-fueling of any funded diesel buses.

School districts shall attach to the application copies of the current California Highway Patrol (CHP) Inspection Approval Certificate (CHP 292) to substantiate that the pre-1987 bus qualifies as an in-use bus. School Districts shall also attach copies of their Certificate of Insurance.

All new funded buses shall be owned and operated by the recipient school district for a minimum of five (5) years.

C. Criteria for Replacement of Pre-1987 Buses:

All pre-1987 buses proposed for replacement shall be in current use and have current CHP certification. The application form requires providing specific information related to the replaced bus. All pre-1987 buses with a GVWR greater than 14,000 pounds are eligible for replacement.

Priority shall be given to pre-1977 model year school buses. Any pre-1977 school buses in any given fleet shall be replaced first. Both heavy-duty diesel and heavy-duty gasoline buses (without catalytic converter) are eligible. These buses shall be documented and must be destroyed upon replacement.

Where fleets contain too few or no pre-1977 buses, any heavy-duty diesel or heavy-duty gasoline (i.e., without catalytic converter) bus, model years 1977 through 1986, are eligible for replacement. School districts, at their discretion, may exchange their pre-1987 buses with a pre-1977 bus from any other California school bus fleet and claim the pre-1977 bus as the replacement bus. The school district shall destroy the pre-1977 bus and provide the Energy Commission with proof of destruction.

D. Infrastructure Criteria Overview

New fueling capacity requested will be directly related to the capacity needed by the new alternative-fuel buses awarded through this program.

A detailed and complete description shall be provided at the time of application submittal of the school's fueling infrastructure. Failure to provide the fueling infrastructure may result in the school district application being rejected.

Alternative fuel infrastructure funding may be used to purchase electric recharging equipment, new slow-fill alternative fuel equipment or to buy down the cost of a new public access fast-fill alternative fuel fueling facility.

PROJECT IMPLEMENTATION

A. Project Selection and Award of Funds

School district applications must be submitted to the Energy Commission's Contracts Office no later than the date and time indicated in the Timetable on page 2. Applications will be verified for funding eligibility.

The CARB has allocated specific amounts to each air district based on population. For the air districts that the Energy Commission administers, the allocated funds are provided in the table below.

Funding Allocation (2003-2004 FY)		
Region	Funds	Approximate # of Buses
Self-Administered Program		
Bay Area AQMD	\$900,000	7
Sacramento Metropolitan AQMD	\$160,000	1-2
San Diego APCD	\$390,000	3
South Coast AQMD	\$2,030,000	16
Energy Commission-Administered program		
Region	Funds	Approximate # of Buses
Monterey Bay APCD	\$95,000*	1
San Joaquin APCD	\$455,000*	3-4
Ventura County APCD	\$102,000*	1
Pool - all other air districts (including the above three districts)	\$498,000*	4
TOTAL	\$4,600,000	36-38

*Total Energy Commission allocation is set at \$1,120,000 but regional allocations within Energy Commission administered program are approximate.

The CARB designated that two-thirds of the new bus purchases be alternative-fuel school buses and one-third of new bus purchases be intermediate level diesel school buses. This designated funding split will be implemented as a statewide goal, but with less emphasis on region-specific implementation. Due to the small amount of funding available this year, it is impractical for many air districts to maintain this funding policy in their respective regions. The staff's proposal provides school districts with the flexibility to purchase either intermediate level diesel or alternative-fuel school buses, but does not constrain new bus purchases to a particular fuel type as a result of decreased funding allocations.

The Energy Commission will award buses, to the maximum extent possible, without exceeding the allocated funding. School buses will be awarded through the following lottery process:

Each qualified school district application will be assigned a number and sorted by Environmental Justice, air district. Example: ABC school district, in the San Joaquin Valley air district, requests five CNG buses. They have 65 percent of the enrolled students enrolled in the free lunch program. This school district would be placed in the EJ fuel bin in the San Joaquin Valley APCD section. The XYZ school district wants three clean diesel buses and also has 65 percent of their students in the free lunch program. This district would also be placed in the EJ bin in the San Joaquin Valley APCD section. Numbers would then be drawn to determine the schools districts queue position. Buses would then be awarded maintaining the CARB bus ratio for alternative fuel and low sulfur diesel. Only one bus will be awarded per number drawn.

For each air district, the numbers in the EJ bins would be drawn first until 50 percent of the allocated funds in that air district have been exhausted. Once this level is reached, numbers from the non EJ bins would be combined with the remaining EJ numbers, and the selection process continues until the air district's funding allocations are exhausted.

If sufficient funds remain, all applicants' numbers will then be combined for a second drawing without regard to air districts money allotment or EJ requirements. Fuel type allocations would still apply for the second drawing.

As soon as school districts are awarded funding for buses or infrastructure the Energy Commission will send a contract agreement to the school district that specifies all conditions of the award (See Attachment 2).

B. School Bus Monitoring and Reporting

School districts shall notify the Energy Commission Contract Manager when funded buses are ordered, and again within ten (10) days of the buses arrival on site. School districts shall notify the Energy Commission when any alternative-fuel equipment is ordered or construction contracts signed, and then when the equipment is operating.

School districts receiving funding for diesel buses **shall** notify the Energy Commission when contracts are signed for the purchase of low-sulfur fuel. School districts shall provide the Energy Commission with the low sulfur fuel's storage arrangement, as well as the mechanical methods to be used to avoid mis-fueling of intermediate diesel school buses funded by this program.

School districts shall provide CHP certificates to the Energy Commission and proof that the buses removed from service have been scrapped at the time of receipt of the new bus. This includes the method of disposal for any 1977-1986 buses that are not destroyed.

C. Performance Penalty for Late Delivery of School Buses

Questions regarding the late fee should be directed to the California Air Resources Board. Krista Fregoso can be reached at (916) 445-5035.

The modified CARB Guidelines now include a mechanism by which a monetary performance penalty is assessed against the business entity responsible for a delay that results in the failure to deliver program-funded school buses to school districts by the specified delivery deadline of December 31, 2005. Specifically, the CARB will assess a performance penalty of \$100.00 per day for each day a bus is delivered after the delivery deadline. The purpose of this performance penalty is to ensure a level playing field for all business entities that stand to profit from the purchase of program-funded school buses and to minimize any potential risks to school districts.

For each bus delivered late, the Energy Commission is required by the CARB to reduce the grant payment to either the school bus vendor or the school district (depending on the contract arrangements for the payment of bus purchase orders) by \$100.00 per day for each day a bus is delivered after December 31, 2005. For each bus delivered after this deadline, the CARB will reimburse the Energy Commission, upon receipt of contractually-specified invoices, an amount equal to the state's share of the bus purchase price minus the calculated performance penalties.

The CARB requires that the delivery deadline must be included in the contract language in which the public agency (Energy Commission) awards funds to school districts, and in the terms and conditions of the purchase order agreement between school districts and school bus distributors. In addition, each funding award contract and school bus purchase order agreement must contain the following statement:

“The CARB shall assess a performance penalty of \$100.00 per day per bus on the business entity responsible for a delay that results in the failure to deliver to school districts any school bus purchased with funds from the Lower-Emission School Bus Program by the delivery deadline contained in this agreement. For each bus delivered to a school district after December 31, 2005, the local air district or the California Energy Commission, whichever public agency is responsible for administering the program, shall reduce the grant award payable to the school bus distributor or school district by an amount equal to the calculated performance penalties.”

Any funds generated through the enforcement of this performance penalty will be used to augment program funding in the region in which the violation occurred for those air districts with distinct funding allocations. For violations that occur in school districts within air districts without distinct funding allocations, the funds collected through the enforcement of this penalty will be used to augment program funding on a statewide basis.

LOWER-EMISSION SCHOOL BUS PROGRAM

APPLICATION PACKAGE

Phase 4



**Lower Emission School Bus Program
Bus Replacement Application**

1. School District Name: _____
2. Street Address: _____
3. City _____ County _____ Zip _____
4. Air District Jurisdiction Name: _____
5. Board Resolution: Must be signed and attached (See Example). (The Resolution and Certificate of Insurance may be sent in later, but no later than 4:00 P.M. on December 30, 2004.)
6. School District Federal Tax I.D. #: _____
7. Contact Person:
 - ❖ Name/Title/Position: _____
 - ❖ Phone Number: _____ Fax Number: _____
 - ❖ E-Mail Address: _____
8. Signature Authority:
 - ❖ Name/Title/Position: _____
 - ❖ Phone Number: _____ Fax Number: _____
 - ❖ E-Mail Address: _____
9. Copy of California Highway Patrol Bus Certificates: _____ (Attach To Application)
10. Bus Type and Number Requested (CNG, LPG, Elec., Diesel): _____
11. School District Cost Share Funds Total: \$ _____
(Attach Documentation)
12. Infrastructure Funding Requirement. (Fully describe the need for additional alternative fuel infrastructure, include estimate of the cost of necessary equipment and installation.)

Infrastructure Amount Requested \$ _____
13. Application Prepared By: _____ Date: _____
Title: _____

**Lower Emission School Bus Program
Old Bus to be Replaced**

1	2	3	4	5	7	8	9
<u>S.D.</u> <u>No.</u>	<u>VIN</u> <u>Number</u>	<u>Type</u> <u>C, D</u>	<u>GVWR</u>	<u>Miles Last</u> <u>12 months</u>	<u>Year</u> <u>Built</u>	<u>Fuel</u> <u>Type</u>	<u>Mfg.</u>

Note: Please complete for each bus to be replaced.

- Bus type C is a conventional bus (engine in front of the windshield)
- Bus type D is a transit type (engine is behind windshield, or between axles or behind rear axles).
- S.D. is the bus number assigned by the school district.
- GVWR is the gross vehicle weight rating.
- Fuel type is diesel gasoline or other.

**Lower Emission School Bus Program
New Buses Requested**

<u>DGS #</u>	<u>Fuel Type</u>	<u>Manufacturer</u>	<u>Chassis Model</u>	<u>Type C, D</u>	<u>GVWR</u>	<u>Bus Base price</u>

**Note: Please fill one row for each bus to be replaced (mixed fuel acceptable on same sheet)
All DGS information must be from price list summary.**

- Base price shall include the fuel option cost (i.e., electric, alternative fuel, diesel with PM trap) and also include seat belts (if requested).
- Bus type C is a conventional bus (engine in front of the windshield)
- Bus type D is a transit type (engine is behind windshield, or between axles or behind rear axles).
- Fuel type is either CNG or Low sulfur diesel.

Lower Emission School Bus Program
Infrastructure
Should be Completed Whether or not the School District
is applying for Infrastructure Funds

1. Local utility company name: _____
2. Request for: facility upgrade: _____ or new fueling station: _____
3. Distance to nearest CNG/diesel fueling station (in miles): _____
4. Explain below why you are unable to fuel off-site and why you need a fueling station. If diesel refueling is off-site explain how the use of low sulphur diesel will be guaranteed (use separate page if necessary):

EXISTING FUELING STATION:

5. Size of compressor or electric charger (in CFM/ kw) _____
6. Alternative fuel/diesel storage capacity (gallons): _____
7. Number of alternative fuel buses presently on site: _____
8. Number of CNG/electric fueling positions, or diesel pumps: _____
9. Indicate gas pressure and voltage available at fuel site: _____
10. Is the station accessible to public? Yes: ____ No: ____

NEW FUELING STATION:

11. CFM capacity to accommodate requested buses: _____
12. Number of CNG posts (2 hoses per post) requested: _____
13. Is the station going to be accessible to public? Yes: ____ No: ____
14. Is this an expansion of existing fast fill station? Yes: ____ No: ____

Explain:

15. Buy down part of new fast fuel station. (Provide explanation below)

(SAMPLE)
BOARD RESOLUTION
Smith Unified School District
1234 Johnson Blvd
Bakersfield, CA 97643
Telephone: 566 897 5432-Fax 566 897 5433

Board of Trustees: (list names)
Superintendent Name:

RESOLUTION # XXXX

Whereas: Funds have been appropriated to the California Energy Commission (Energy Commission) through Proposition 40 for the Low Emission School Bus Program

Whereas: Smith Unified School District has qualifying school buses manufactured prior to 1987

Now, therefore, be resolved, that the Smith Unified School District Board of Trustees authorize the superintendent.... To apply for the Low Emission School Bus Program...and if successful.....enter into a contract with the California Energy Commission...

Be it also resolved, that the superintendent of Smith Unified School District is hereby authorized and empowered to execute in the name of Smith Unified School District all necessary documents to implement and carry out the purpose of this resolution.....

Date Approved: Thursday, August 16, 2003

Ayes: 3

Noes: 4

Abstain: 1

Absent: 6

Clerk, Board of Trustees

Attachment 1
Lower-Emission School Bus Program
Phase IV

All buses purchased in this program must be 14,000 pounds or greater										
Prices are to be used as a guide only and do not necessarily indicate what purchaser may pay for a new school bus.										
Prices are based on the old Department of General Services Bid #1-00-23-12 and reflect the MAXIMUM amount the Energy Commission will pay for a similar bus. Fire suppression system on CNG bus would be extra. Price also does not include Kevlar seats.										
DGS	Supplier					Chassis	Lbs	Mfg.	Mfg.	Total*
Item#	Number	Dealer	Bus Type	Bus Use	Engine	Model	GVWR	Chassis	Body	Price \$
8	194980	AZ Bus sale	Type D	Transit	CNG	2409	20000	BB	BB	\$95,572.18
9	194980	AZ Bus sale	Type D	Transit	CNG	2504	21000	BB	BB	\$96,063.49
10	194980	AZ Bus sale	Type D	Transit	CNG	2803	25500	BB	BB	\$98,125.55
11	194980	AZ Bus sale	Type D	Transit	CNG	3000	26500	BB	BB	\$103,036.59
12	194980	AZ Bus sale	Type D	Transit	CNG	3211	27500	BB	BB	\$105,062.60
13	194980	AZ Bus sale	Type D	Transit	CNG	4308	27500	BB	BB	\$111,555.72
14	194980	AZ Bus sale	Type D	Transit	CNG	3707	30000	BB	BB	\$112,748.46
17	194980	AZ Bus sale	Type D	Transit	CNG	3904	36200	BB	BB	\$135,214.28
18	194980	AZ Bus sale	Type D	Transit	CNG	3905	36200	BB	BB	\$135,857.00
33	666089	Calif Bus sales	Type D	Transit	CNG	140HS	34000	Thomas	Thomas	\$131,160.20
34	666089	Calif Bus sales	Type D	Transit	CNG	140HS	34000	Thomas	Thomas	\$131,154.02
35	666089	Calif Bus sales	Type D	Transit	CNG	140HS	36200	Thomas	Thomas	\$130,956.26
36	666089	Calif Bus sales	Type D	Transit	CNG	140HS	36200	Thomas	Thomas	\$131,154.02
38	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	20000	Inter'nall	Inter'nall	\$63,935.14
39	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	21000	Inter'nall	Inter'nall	\$65,253.84
40	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	25500	Inter'nall	Inter'nall	\$66,951.28
41	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	26500	Inter'nall	Inter'nall	\$71,455.86
42	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	27500	Inter'nall	Inter'nall	\$72,606.94
43	689963	West Coach Corp	Type C	Conventional	L/S Diesel	IC	27500	Inter'nall	Inter'nall	\$80,853.31
44	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	20000	Inter'nall	Inter'nall	\$71,802.77
45	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	21000	Inter'nall	Inter'nall	\$73,719.82
46	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	25500	Inter'nall	Inter'nall	\$74,099.62
47	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	26500	Inter'nall	Inter'nall	\$79,601.45
48	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	27500	Inter'nall	Inter'nall	\$80,540.35
49	689963	West Coach Corp	Type D	Transit	L/S Diesel	FE	27500	Inter'nall	Inter'nall	\$86,285.12
50	689963	West Coach Corp	Type D	Transit	L/S Diesel		30000	Inter'nall	Inter'nall	\$87,807.51
51	689963	West Coach Corp	Type D	Transit	L/S Diesel	RE	34000	Inter'nall	Inter'nall	\$102,345.02
52	689963	West Coach Corp	Type D	Transit	L/S Diesel	RE	34000	Inter'nall	Inter'nall	\$104,206.90
53	689963	West Coach Corp	Type D	Transit	L/S Diesel	RE	36200	Inter'nall	Inter'nall	\$108,133.29
54	689963	West Coach Corp	Type D	Transit	L/S Diesel	RE	36200	Inter'nall	Inter'nall	\$108,304.10

Phase IV

55	New	All	Type A	Cutaway	CNG	E450	14050	Ford	all	\$55,620.00
56	194980	AZ Bus sale	Type D	Transit	L/S DieseL	3905	36200	BB	BB	\$114,878.99
57	666089	Calif Bus sales	Type D	Transit	L/S DieseL	140HS	36200	Thomas	Thomas	\$108,665.00
	Dealer #		Dealer Name			Address				Phone
	194980		AZ Bus Sales Inc.		Colton	POBox 700, CA 92324				800-437-5522
	666089		California Bus Sales & Services Cer	Fresno	2716 Cherry Av., Ca 93706					800-331-6183
	689963		West Coach Corp.	Chino	13790 Redwood Street, CA 91711	CA 800-215-66				
										S CA. 800-929-22
	Note 1: This list of Buses is subject to ARB Emission Standards that are included in the Energy Commission's PON and the ARB guidelines.									
	Note 2: This is document is not a bid it is only a guideline indicateing the maximum amount the Energy Commission will pay for a simillarly equiped bus. Any school bus that is price competitive with the above, satisfies the ARB guidelines and these PON requirements is eligible.									
	Note 3: Kevlar seat and fire suppression are not included in the above prices. If a school districts wishes to have fire suppression on a CNG bus the Energy Commission will pay up to a maximum of \$4,000 for the addition of this item.									
	Note 4: All buses purchased or replaced through this program must have a gross vehicle weight rating of 14,000 pounds or greater.									

STANDARD AGREEMENT

STD. 213 (NEW 06/03)

AGREEMENT NUMBER

600-04-XXX

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is:

3. The maximum amount of this Agreement is: \$

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work Pages

Exhibit B – Budget Detail and Payment Provision Pages

Exhibit C* – General Terms and Conditions GTC 304

Check mark one item below as Exhibit D:

☒ Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement) Pages

☐ Exhibit D - *Special Terms and Conditions

Exhibit E – Contacts Pages

Exhibit F – Contractor Certification Clauses Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission (Commission)

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

California Department of General
Services Use Only

☐ Exempt per:

EXHIBIT A SCOPE OF WORK

PURPOSE

The purpose of this contract is to provide funding to the _____ School District participating in the New School Bus Replacement Program. The school will replace pre-1987 school bus(es) with a new safer, low emission school bus awarded to the district.

The following School Buses have been awarded for Infrastructure funding under this contract:

Compressed natural gas (CNG) school bus:
Low Sulfur Diesel school bus:
Liquefied Petroleum Gas (LPG) school bus:
Maximum dollar for CNG infrastructure:

Task 1: Fueling Facility Installation to Support the School Bus Program:

School Districts will have in place, install or cause to be installed any CNG or low sulfur refueling facilities or equipment as may be required to operate the awarded buses as specified in Section II, paragraph 14, “Fueling Station Standards”. Such refueling facilities shall be fully operational prior to the School District’s receipt of any replacement buses under this program. The Commission may contribute funds toward purchasing equipment for CNG fueling facilities up to ten percent of price of the Commission ‘school bus cost-share.

Task 2: Bus purchase:

School districts may purchase replacement bus(es) through the State Department of General Service Office of procurement (DGS) or directly from the bus vendor. The Commission has established a bus cost schedule indicating the unit maximum cost based on DGS contract 1-00-23-12-01 specifications. If vendor price is lower than DGS contract, the Energy Commission cost–share will be based on the vendor lower price.

A School District, at its discretion, may order additional options and shall pay for such options. However, if any equipment or items are deleted from the DGS specifications the invoice must reflect what equipment or items were deleted and the vendor cost of those items. The cost of those items will be deducted from the bus per unit cost as identified in Exhibit E. School districts contribution to the cost of the bus shall include taxes and fees.

The school district shall keep ownership of the new bus for at least a period of three (3) years.

Task 3: CARB Emission Requirement:

School District shall be responsible to keep the emission control equipment of the bus in working condition. Buses shall meet emission requirements as defined by CARB in the Low Emission School Bus Guideline of December 7, 2000. School districts shall perform routine preventative maintenance at their cost in accordance with the manufacturer's suggested maintenance schedules. Emission control equipment and particulate traps breakdown or failures are expected to be repaired under applicable manufacturer's warranty. School District may have to make buses available for emission and fuel economy testing as directed by CARB.

Task 4: Data:

School Districts shall notify the Energy Commission, by e-mail, of the date they ordered their buses. School districts shall notify the Energy Commission within 10 days of delivery and acceptance or rejection of the bus. Immediately after purchase and delivery of the buses, School District shall collect, process, compile, and send to the Energy Commission a completed "School Bus and Infrastructure Report" with itemized information as required below. The School District shall establish and maintain adequate procedures to collect and process this data.

School districts shall provide the following information upon acceptance of their buses. This information is requested by CARB for the purpose of tracking emission reduction.

Agency Identification

- Agency name:
- Street Address
- City
- County:
- Zip code
- Air District
- Tax Payer ID #.

Bus Identification (For each Old Bus identified in PON):

(Note: oldest buses in the fleet shall be destroyed first)

- Bus ID (school District):
- VIN No.:
- License No.
- GVWR:
- Manufacturer:
- Engine Manufacturer:
- Bus Type and Model:
- Chassis Model:
- Engine Family Description:
- Fuel Type:

Bus Identification (for each New Buses):

- Bus ID(school District):
- VIN No.:
- GVWR:
- Manufacturer:
- Engine Manufacturer:
- Bus Type and Model:
- Chassis Model:
- Engine Family name
- CARB Executive Order No.:
- Fuel Type:
- Bus price including all taxes and fees:
- Itemized list of matching funds (name and dollar):

Infrastructures (CNG ,Diesel, Propane)

Include all infrastructure and ancillary equipment purchased and provide the following:

- Local Utility Company Name:
- Infrastructure description (upgrade, new station, fast fill)
- Infrastructure itemized equipment
- Total Amount awarded in dollar:
- List of source of matching funds (name and dollar):
- Distance to the fueling station
- Indicate if station is public or not:

Task 5: Old Buses Disposal:

Old school buses shall be destroyed no later than 30 days after delivery of new buses. The School District shall supply a Certificate of destruction to the Energy Commission no later than 10 days after destruction. Certificate shall indicate that the engine and bus has been destroyed.

Task 6. Fuel and Fuel Costs:

The school district shall assume the full cost of fuels and any incremental costs associated with fuels. School districts awarded intermediate diesel shall insure that proper fuel storage is in place at the fleet site, no mis-fueling shall occur between standard diesel and low sulfur diesel fuels (as required in the CARB Guideline), and awarded buses shall only use low sulfur fuel.

The school district is responsible for the installation and operation of the alternative fueling station unless the fueling station is a public station. All buses awarded under this program shall use fuels, fluids, transmission oil, crankcase oil, lubricants, etc., as specified by manufacturers in each manufacturer's owner and service manuals.

Task 7: Vehicle Maintenance:

The School District shall provide adequate facilities and equipment to properly maintain the school buses received under this program, according to manufacturers requirement and /or state requirements.

EXHIBIT B

Budget Detail and Payment Provisions

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractors Assignee for actual expenditures incurred in accordance with the rates specified herein, and made a part of this Agreement.

Invoices shall include the Energy Commission Agreement Number and shall be submitted in duplicate to:

California Energy Commission
Accounting Office, MS-2
1516 9th Street, First Floor
Sacramento, California 95814

2. **PAYMENT TERMS:**

- ☐ *Monthly Flat Rate* ☐ *Quarterly Flat Rate* ☒ *One –Time Payment*
☐ *Itemized Monthly or Quarterly Invoice*
☐ *Advance Payment Not to Exceed \$ _____ or _____ % of Contract Amount*
☐ *Reimbursement/Revenue*
☐ *Other (Explain) (i.e. lump sum/deliverable)*

3. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered.
- B. A request for payment must include an invoice with cost backup, such as, receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges and expenses authorized by this Agreement.
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of

California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee’s wages.

4. **BUDGET DETAIL**

Total Number of buses	School District Cost-share (Including Infrastructure)	Maximum Energy Commission Cost-share (Including Infrastructure)
	\$	\$

School districts shall be responsible for all options not included in Exhibit D list of buses (except safety belts). School districts may assign the Energy Commission cost-share of the bus to the vendor that has been chosen by school districts to supply the bus(es). School districts shall order and pay the vendor directly for their share of the cost including taxes and any additional cost of options the school district has chosen. Invoices sent to the Energy Commission for payment to vendors shall be itemized and indicate separately the list of options included in the buses base price (Exhibit D) and the list of options added by the School District.

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS

PLEASE NOTE: This page will not be included in the final agreement. The General Terms and Conditions will be included in the agreement by reference to the internet site: www.dgs.ca.gov/contracts

EXHIBIT D
Special Terms and Conditions

1. **PROPOSAL INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of Commission Program Opportunity Notice (PON) number 600-04-602, titled, Lower-Emission School Bus Program, Contractor's application dated _____ and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

2. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

3. **INDEMNIFICATION:**

The School District agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the School District in the performance of this Agreement and from any and all claims or losses occurring or resulting to any person, firm or corporation who may be injured or damaged, from the School District's use, operation, servicing and maintenance of the engines and school buses.

4. **EXCUSE FROM PERFORMANCE:**

The parties hereto shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of circumstances beyond their control, including, but not limited to, strikes and other labor disputes, wars, civil commotion, natural calamity, fire, equipment breakdown, failures or damage due to collision, or if the Commission is prohibited by law, regulation, judicial or administrative ruling or if sufficient funding for the program is not appropriated. In the event of any delay as aforesaid, the time for performance may be extended by mutual agreement for a period equal to the length of delay.

5. **STATEMENT OF COMPLIANCE:**

School Districts representative's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the School District has, unless specifically exempted, complied with Government Code Section 12990 and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to the development, implementation, and maintenance of a non- discrimination program. School Districts agree not to unlawfully discriminate against any employee or applicants for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age (over forty).

6. **NONDISCRIMINATION CLAUSE:**

- A. During the performance of this Agreement, the School District and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or gender. The School District and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The School District and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The School District and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The School District shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

7. **FUELING STATION STANDARDS:**

It shall be the responsibility of the School District to ensure that any fueling facility constructed or caused to be constructed in performance of this Agreement shall conform to all materials compatibility and recognized standards as may be required for each fuel type. The School District shall maintain a detailed itemization of and retain all records relating to all equipment purchases relative to such installation. Such records shall be maintained for the term of this Agreement and shall be available for inspection or audit at any reasonable time by the Commission or its designee. If the School District will use an existing private refueling station, it shall be the responsibility of the School District to ensure that the station conforms to all materials compatibility and recognized standards as may be required. The School District shall compile and maintain all records relating to equipment purchases relative to such installation for the term of this Agreement.

8. **INSURANCE:**

- A. If the School District has purchased insurance, the School District shall:

- 1) Add the Commission as additional insured to its applicable liability insurance policy or policies.
 - 2) Furnish to the State a certificate of insurance stating that there is general liability insurance presently in effect for the School District of not less than \$5,000,000.00 per occurrence for bodily injury and property damage liability, combined, on an annual basis during the term of this Agreement.
 - 3) Obtain and provide the Commission with current certificate(s) of insurance which must include the following two provisions:
 - a. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to DGS and the Commission.
 - b. The State of California, its officers, agents, employees and servants are included as additional insured, but only insofar as the operations under this Agreement are concerned.
 - 4) Agree that the bodily injury and property damage liability insurance herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the School District agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of DGS and the School District agrees that no work or services shall be performed prior to the giving of such approval. In the event the School District fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- B. If the School District is self-insured or partially self-insured, the following applies in addition to the above requirements:
- 1) The School District represents and warrants that the full faith and credit of the School District is pledged for the purpose of providing automotive and general liability coverage for the School District and each of its officers, agents, and employees during the term of this Agreement.
 - 2) The School District certifies that the School District self-administers, defends, settles and pays third-party claims for bodily injury, personal injury, death and/or property damage. Protection under this program is warranted to meet or exceed \$5,000,000.00 per occurrence.
- C. All Certificates of Insurance must:
- 1) Provide the School District's name, as indicated on this Agreement;
 - 2) Provide the Agreement number as referenced in this Agreement;
 - 3) Provide the name of the Program in which the School District is participating;
 - 4) Provide a contact person for questions regarding the Certificate of Insurance, and telephone number;

- 5) Be mailed directly to:

California Energy Commission
Contracts Office
Elizabeth Stone, Contract Officer
1516 Ninth Street, MS-18
Sacramento, CA 95814

- D. Questions regarding Certificates of Insurance should be directed to the Commission's Contracts Office at (916) 654-4392.

9. **NATIONAL LABOR RELATION BOARD CERTIFICATION:**

The School District, by signing this Agreement, swears under penalty of perjury that no more than one final un-appealable finding of contempt of court by a Federal Court has been issued against the School District within the immediately preceding two year period because of the School District's failure to comply with an order of a Federal Court which directs the School District to comply with an order of the National Labor Relations Board (Public Contract Code Section 10296).

10. **OWNERSHIP OF THE VEHICLES:**

In accordance with Education Code Section 17911.5(a), title to the bus(es) awarded under this Agreement shall be in the name of the School District. The School District agrees not to dispose of any School Bus awarded during the Program for a period of three (3) years.

11. **MAINTENANCE FACILITIES:**

The School District will provide adequate facilities and equipment to properly maintain the school buses received under this program, including the ability to lift the vehicles sufficiently to perform proper inspection and maintenance. If school district request CNG school buses, the school district facility shall be modified to conform to any regulation in place.

12. **DATA COLLECTION:**

If required by the Energy Commission, the School District will collect, process, compile, and send to the Commission the data identified in the included Work Statement (Paragraph III, Task 5) of Exhibit A. The School District will establish and maintain adequate procedures to collect and process this data.

13. **FUEL:**

If the School District operates alternative fuel school buses, the school district is responsible to install and operate the alternative fueling station unless the fueling station is a public station. For school district awarded intermediate diesel, the school district is required to use low sulfur fuel recommended by the ARB and insure that the awarded buses will only use this fuel. All buses awarded under this program will use fuels, fluids, transmission oil, crankcase oil, lubricants, etc., as specified by manufacturers in each manufacturer's owner and service manuals.

14. **OWNERSHIP PERIOD:**

School district shall assume full ownership of the school bus upon delivery and retain ownership for a period of three (3) years.

15. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepared a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership:** Each report shall become the property of the Commission.
- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

16. **ASSIGNMENT:**

- A. The only assignment authorized is the assignment of payment of the bus to the vendors. School districts may assign the Energy Commission cost-share of the bus to the vendor that has been chosen by school districts to supply the bus. School districts shall order and pay the vendor directly for their share of the cost including taxes and any additional cost of options the school district has chosen. Approved Assignment Form shall be signed and returned to the Energy Commission (Attachment 1).
- B. Without the written consent of the State, this Agreement is not assignable by the School District, except as stated above, either in whole or in part, to any third party. This includes but is not limited to, any individual, any contractor or contract firm, any other school district or merged school district, or any other consortium or joint powers authority. Exceptions are listed above and in Exhibit A, Work Statement.

17. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.

18. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportion or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

19. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

20. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
21. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
22. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

23. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement.

Delivery by fax or e-mail is not considered notice for the purpose of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

24. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

A. **Compliance** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

B. **Equitable Adjustment** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.

C. **Revoking a Stop Work Order** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

25. **INTERPRETATION OF TERMS:** Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A, Scope of Work and Exhibit D, Special Terms and Conditions.

EXHIBIT E
NAMES AND ADDRESSES OF AGREEMENT REPRESENTITIVES

Commission Contract Manager: Contract Manager, MS-XX California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone (916) 654-XXXX Fax # e-mail:	Contractor Project Manager: Name: School District: Address: City, State, Zip Phone: Fax: e-mail
Commission Contract Officer: Elizabeth Stone, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654- 5125 Fax: (916) 654-4423 e-mail: estone@energy.state.ca.us	Contractor Contract Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail
Invoices, Progress Reports and Non-Confidential Deliverables to: Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4419 e-mail: awilliams@energy.state.ca.us	
Legal Notices: Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)

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CONTRACTOR CERTIFICATION CLAUSES

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,

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- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. UNION ORGANIZING: Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

6. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.
7. SWEATFREE CODE OF CONDUCT:
 - a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor,

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- indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).
8. **DOMESTIC PARTNERS:** Commencing on July 1, 2004 Contractor certifies that it is in compliance with Public Contract Code section 10295.3 with regard to benefits for domestic partners. For any contracts executed or amended, bid packages advertised or made available, or sealed bids received on or after July 1 2004 and prior to January 1, 2007, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with PCC 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
- a. Current State Employees (PCC 10410):
- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- b. Former State Employees (PCC 10411):
- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

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- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - c. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - d. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 - e. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body

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which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. **AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
8. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all contractors that are not another state agency or other governmental entity.